

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Hobart Corporation, et. al.,

Plaintiffs,

v.

The Dayton Power and Light Company, et al.,

Defendants,

v.

B & D LIMITED PROPERTIES, LTD.
Thomas M. O'Diam, Statutory Agent
2371 Lakeview Drive
Beavercreek, Ohio 45431,

THE SOUTH DAYTON LAND FILL
REMEDATION TRUST,
Horace J. Boesch, Jr., Co-Trustee
4170 Brookdale Drive
Dayton, Ohio 45429,

THE SOUTH DAYTON LAND FILL
REMEDATION TRUST,
Mark Fornes, Co-Trustee
4849 Winding Creek Trail
Dayton, Ohio 45429,

JIM CITY SALVAGE, INC.
William H. MacBeth, Statutory Agent
401 East Stroop Road
Kettering, Ohio 45429,

DRYDEN ROAD INVESTMENTS, LLC
Lacey Gibbs, Statutory Agent
9403 Fort Laramie Swanders Road
Anna, Ohio 45302,

and

Civil Action No. 3:13-cv-115

Judge Walter H. Rice

Magistrate Judge Michael Newman

RONALD H. BARNETT
2233 East River Road
Dayton, Ohio 45439,

Third-Party Defendants.

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DEFENDANT THE DAYTON POWER AND LIGHT COMPANY'S
THIRD-PARTY COMPLAINT

Pursuant to Fed. R. Civ. P. 14, DP&L states as follows for its Third-Party Complaint:

NATURE OF THE ACTION AND JURISDICTION

1. The Dayton Power and Light Company ("DP&L") brings this Third-Party Complaint pursuant to Sections 107(a)(1), (a)(2), (a)(3), and (a)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9607(a)(1), (a)(2), (a)(3), and (a)(4) ("CERCLA").

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 9607 and 9613(b), providing jurisdiction over controversies arising under CERCLA, and 28 U.S.C. §1331, providing jurisdiction over federal questions.

3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391 because the property where the releases and threatened releases of hazardous substances have occurred is located within the territorial limits of this District and Division, the damages giving rise to these claims occurred in this District and Division, and multiple Defendants and Third-Party Defendants reside in this District and Division.

4. Pursuant to 42 U.S.C. § 9613(l), a copy of this pleading, including the Third-Party Complaint, was provided to the Attorney General of the United States and the Administrator of the United States Environmental Protection Agency.

THIRD-PARTY DEFENDANTS

5. Upon information and belief, Third-Party Defendant B & D Limited Properties, Ltd. is an Ohio corporation whose principal place of business is located at 1951 Dryden Road, Moraine, Ohio 45439.

6. Upon information and belief, Third-Party Defendant Horace J. Boesch, Jr., Co-Trustee, The South Dayton Land Fill Remediation Trust, is an individual residing at 4170 Brookdale Drive, Dayton, Ohio 45429.

7. Upon information and belief, Third-Party Defendant Mark Fornes, Co-Trustee, The South Dayton Land Fill Remediation Trust, is an individual residing at 4849 Winding Creek Trail, Dayton, Ohio 45429.

8. Upon information and belief, Third-Party Defendant Jim City Salvage, Inc. is an Ohio corporation whose principal place of business is located at 2335 East River Road, Moraine, Ohio 45439.

9. Upon information and belief, Third-Party Defendant Dryden Road Investments, LLC is an Ohio corporation whose principal place of business is located at 9403 Fort Laramie Swanders Road, Anna, Ohio 45302.

10. Upon information and belief, Third-Party Defendant Ronald H. Barnett is an individual residing at 2233 East River Road, Dayton, Ohio 45439.

11. Each Third-Party Defendant is being sued both individually and as a successor-in-interest to any other entity that may be liable to DP&L under CERCLA. To the extent that any Third-Party Defendant is a successor to any such entity, the allegations asserted against that Third-Party Defendant are to be construed to apply to all of the Third-Party Defendant's predecessors.

12. Plaintiffs, Defendants, and Third-Party Defendants are “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

13. This Third-Party Complaint concerns the Site defined in paragraph 2 of the Fifth Amended Complaint (the “Site”).

14. The Site is a “facility” as that term is defined in 42 U.S.C. § 9601(9).

15. Upon information and belief, there has been both a release and a threatened release of one or more hazardous substances from the Site.

16. As the direct and proximate result of the release and threatened release from the Site, DP&L has incurred substantial and necessary costs of response that are consistent with the NCP including, without limitation, costs associated with ground water sampling, ground water monitoring, lab results, and consultant’s expenses, among others.

17. Upon information and belief, each of the Third-Party Defendants is an owner, operator, arranger, and/or transporter, of hazardous substances that were ultimately disposed of at the Site.

18. Third-Party Defendant B & D Limited Properties, Ltd. is an owner of property within the Site boundaries described by the United States Environmental Protection Agency (“EPA”).

19. Third-Party Defendant The South Dayton Land Fill Remediation Trust, Horace J. Boesch, Jr., and Mark Fornes, Co-Trustees, is an owner of property within the Site boundaries described by EPA.

20. Third-Party Defendant Jim City Salvage, Inc. is an owner of property within the Site boundaries described by EPA.

21. Third-Party Defendant Dryden Road Investments, LLC is an owner of property within the Site boundaries described by EPA.

22. Third-Party Defendant Ronald H. Barnett is an owner of property within the Site boundaries described by EPA.

23. Upon information and belief, none of the Third-Party Defendants have cooperated with federal, state, or local officials to prevent any harm to the public health or the environment with respect to the Site.

24. DP&L is entitled to contribution and/or indemnification from the Third-Party Defendants pursuant to Sections 107(a)(4)(B) and 113(f)(1) of CERCLA for the above-referenced costs incurred by DP&L in connection with the contamination at the Site.

25. If and to the extent that DP&L is held liable in this action—which alleged liability DP&L expressly denies—then DP&L is entitled to contribution and/or indemnification from the Third-Party Defendants pursuant to Sections 107(a)(4)(B) and 113(f)(1) of CERCLA.

PRAYER FOR JUDGMENT

WHEREFORE, DP&L prays that the Court enter judgment in its favor as follows:

1. That the Plaintiffs take nothing by their Fifth Amended Complaint, and that the Fifth Amended Complaint be dismissed with prejudice;
2. That the Plaintiffs' request for declaratory relief be denied;
3. That DP&L be awarded its costs of suit;
4. That if and to the extent that DP&L is held liable in this action, that it is entitled to recovery of its costs and/or contribution and/or indemnification from the Counterclaim Defendants and Third-Party Defendants;
5. All other relief, both legal and equitable, and the Court deems just.

Respectfully submitted,

/s/ Drew H. Campbell

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Attorneys for Defendant

The Dayton Power and Light Company

CERTIFICATE OF SERVICE

I certify that on October 14, 2016, a true and accurate copy of the foregoing was filed electronically with the Court's ECF system, which will send notification to all attorneys registered to receive such service. Parties may access this filing through the Court's electronic filing system.

/s/ Drew H. Campbell
Drew H. Campbell